

No. 15959

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United States  
Court of Appeals  
for the Ninth Circuit

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CHENG FU SHENG, Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service, Appellee.

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Transcript of Record  
In Two Volumes  
VOLUME I.  
(Pages 1 to 31, inclusive)

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division

FILED

FEB 11 1959

PAUL P. O'BRIEN, CLERK



No. 15959

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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

FALLON & HARGREAVES,  
550 Montgomery Street,  
San Francisco, 11,

For Appellant.

ROBERT H. SCHNACKE,  
United States Attorney,

CHARLES ELMER COLLETT,  
Assistant United States Attorney,  
422 Post Office Building,  
San Francisco 1,

For Appellee.



In The United States District Court, Northern  
District of California, Southern Division

No. 36393—Civil

CHENG FU SHENG, Plaintiff,

vs.

BRUCE G. BARBER, District Director, Immigration  
and Naturalization Service, San Francisco  
District, Defendant.

EXCERPT FROM DOCKET ENTRIES  
1957

Apr. 29—Filed petition for writ of habeas corpus.  
Apr. 29—Filed ord. show cause, returnable May 2,  
1957 at 9:30 A.M. (Murphy).

\* \* \* \* \*

May 1—Filed return to order to show cause.  
May 2—Ordered memos. filed herein in 10 days  
and case cont'd. to May 8, 1957 for subm.  
(Murphy).

\* \* \* \* \*

May 8—Ord. case subm. (Murphy).

\* \* \* \* \*

Nov. 12—Filed opinion of Court (relief prayed by  
plaintiffs denied. Findings of fact and  
conclusions of law to be prepared by pre-  
vailing party) (Murphy).

\* \* \* \* \*

Dec. 3—Filed proposed modifications of findings  
& conclusions, by pltff.

\* \* \* \* \*

1958

- Jan. 16—Filed findings & conclusions (Murphy).
- Jan. 16—Entered judgment—filed Jan. 16, 1958—denying habeas corpus and dismissing petition (Murphy).
- Jan. 16—Mailed notices.
- Feb. 12—Filed notice of appeal by plaintiff.
- Feb. 12—Filed appeal bond in sum \$250.00 (cash).
- Feb. 13—Mailed notices.
- Mar. 4—Filed appellant's designation of record on appeal.
- Mar. 4—Filed statement of points upon which appellant intends to rely on appeal.
- Mar. 4—Filed reporter's transcript of hearing on modification of findings, Jan. 16, 1958.
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In The United States District Court, Northern District of California, Southern Division

Habeas Corpus No. 36393

In the Matter of the Application of Cheng Fu Sheng, For a Writ of Habeas Corpus.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

The petition of Fallon and Hargreaves, on behalf of Cheng Fu Sheng, respectfully shows:

I.

That the said Cheng Fu Sheng, the person in

whose behalf this Writ is applied for, is now detained and restrained of his liberty by the respondent, Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco District, and his officers and agents; that the said Cheng Fu Sheng is now confined in the detention facilities of the Immigration and Naturalization Service at 630 Sansome Street, City and County of San Francisco, State of California; or at their facilities in Santa Rita, Alameda County, California.

## II.

That no previous application for a Writ of Habeas Corpus has been made by or in behalf of the said Cheng Fu Sheng, in and about the matters set forth herein to any Court.

## III.

That the said Cheng Fu Sheng was arrested and found deportable by order of the respondent dated December 2, 1953.

## IV.

That prior thereto, on November 3, 1953, the said Cheng Fu Sheng, filed an application for adjustment of his immigration status to that of a permanent resident pursuant to Section 6 of the Refugee Relief Act of 1953 with the respondent, Bruce G. Barber, District Director of the Immigration and Naturalization Service, San Francisco, California.

## V.

That the respondent, Bruce G. Barber, denied the application of the said Cheng Fu Sheng and

that said denial was approved by David H. Carnahan, Regional Commissioner of the Southwest Region of the United States Immigration and Naturalization Service by order dated January 13, 1956.

## VI.

That thereafter an action for Declaratory Judgment was filed by the said Cheng Fu Sheng in this Court and that by Order dated September 28, 1956, the Honorable Louis E. Goodman, of this Court, granted the said Cheng Fu Sheng Motion for Summary Judgment and remanded the cause for further proceedings to the United States Immigration and Naturalization Service.

## VII.

That in accordance with the above-mentioned Order, said Cheng Fu Sheng was granted another hearing by respondent and that by Order dated March 18, 1957, the Examining Immigration Officer at San Francisco, California, an agent and employee of the respondent, Bruce G. Barber, denied the said Cheng Fu Sheng's application on the alleged ground that Cheng Fu Sheng's place of last residence was Formosa and that he can return thereto without fear of persecution on account of his political opinion; that by order dated April 19, 1957, the said decision of the examining officer was approved by David H. Carnahan, Regional Commissioner of the Immigration and Naturalization Service; that a copy of said Order is attached hereto, marked Exhibit "A", and made a part of

this Writ. Said order is contrary to respondent's prior pleadings and admissions before this Court.

### VIII.

That the said Cheng Fu Sheng's last place of residence, in fact, is the mainland of China; that he would, in fact, be physically persecuted if deported to Communist China; that the said Cheng Fu Sheng would, in fact, be subjected to physical persecution by the governmental authorities of Formosa if deported thereto; that the decision of the respondent, Bruce G. Barber, approved by David H. Carnahan, Regional Commissioner of the Southwest Region, United States Immigration and Naturalization Service, marked Exhibit "A", is arbitrary, capricious and contrary to law.

### IX.

That the decision of the respondent, Bruce G. Barber, approved by said David H. Carnahan, is a final order from which Cheng Fu Sheng has no administrative appeal.

### X.

That said Cheng Fu Sheng lawfully entered the United States as a bona-fide nonimmigrant prior to July 1, 1953; that said Cheng Fu Sheng is unable to return to the country of his birth, nationality or last residence because of persecution or fear of persecution on account of political opinion: that the said Cheng Fu Sheng is, and at all times has been, a person of good moral character; that he is otherwise qualified for admission to the United

States under all provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed.

### XI.

That said Cheng Fu Sheng is statutorily eligible for adjustment of his immigration status to that of a permanent resident pursuant to the provisions of Section 6 of the Refugee Relief Act of 1953, as amended.

### XII.

That counsel has been informed and therefore alleges that Bruce G. Barber, his officers and agents intend to unlawfully deport the said Cheng Fu Sheng from the United States to Formosa.

### XIII.

That Cheng Fu Sheng alleges that he is unlawfully imprisoned, detained, confined and restrained of his liberty by Bruce G. Barber, aforementioned; that such detention is void and illegal; that his detention is contrary to law; that he has been denied due process of law; that the actions of Bruce G. Barber, his officers and agents, is an arbitrary and capricious abuse of administrative power; and that to deport Cheng Fu Sheng to Formosa would be unusual and inhumane punishment contrary to the laws of the United States.

Wherefore, Fallon and Hargreaves, in behalf of Cheng Fu Sheng, pray that a Writ of Habeas Corpus issue releasing the said Cheng Fu Sheng from the detention and custody of Bruce G. Barber, as District Director of the Immigration and Natural-

ization Service, San Francisco District, San Francisco, California.

FALLON & HARGREAVES,  
/s/ By ARLIN W. HARGREAVES,

State of California,  
City and County of San Francisco—ss.

Arlin W. Hargreaves, being first duly sworn, deposes and says:

That he is one of the attorneys for the petitioner, Cheng Fu Sheng; that petitioner is now detained and due to the emergency involved insufficient time remains in which to obtain his signature; that he has prepared said petition and knows that the contents thereof are true and correct.

/s/ ARLIN W. HARGREAVES,

Subscribed and sworn to before me this 26th day of April, 1957.

[Seal] /s/ JOSEPH P. FALLON, JR.,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

### EXHIBIT "A"

United States Department of Justice  
Immigration and Naturalization Service

March 18, 1957

File: A10 491 862—San Francisco Serial No.  
0048.

In re: Cheng Fu Sheng, aka Freddy Cheng or  
Frank Cheng.

## Exhibit "A"—(Continued)

Proceedings Under Section 6 of the Refugee Relief Act of 1953.

In Behalf of Applicant: Arlin W. Hargreaves, Attorney at Law, 550 Montgomery Street, San Francisco 11, California.

Application: Adjustment of Immigration Status.

The applicant is a 31 year old married male, a native and citizen of China. He last entered the United States at the port of Honolulu, T.H. on June 9, 1952, at which time he was admitted for the duration of status under the provisions of Section 3(1) of the Immigration Act of 1924, as amended. The applicant, who was then a captain in the Chinese Nationalist Air Force, came to the United States under the mutual defense assistance program for advanced pilot training at Tyndall Air Force Base in Florida. The evidence shows that the applicant deserted his military unit on October 21, 1952, as it prepared to depart from San Francisco to Formosa. The applicant claims that he is unable to return to Formosa because he is politically opposed to the regime of Chiang Kai Shek, the President of Nationalist China. At the same time, the applicant also claims that he is as violently anti-communist as he is anti-Nationalist and that he could not return to the Mainland of China or to Formosa without fear of persecution.

A reopened hearing was conducted on December 6, 1955 in this case. On December 9, 1955 the Examining Officer recommended denial of the application for the reason that the applicant was of the

## Exhibit "A"—(Continued)

class of aliens which Congress did not intend to come within the purview of the Act. On January 13, 1956 the application was denied on this ground by the Regional Commissioner. The applicant filed an application to withhold deportation to Formosa, which was subsequently denied by the Regional Commissioner on July 6, 1956. Thereafter, this case was taken into the United States District Court, N.D.C., San Francisco, California by the attorneys of record. On September 28, 1956, Judge Louis E. Goodman denied the defendant's motion to dismiss and granted the plaintiff's motion for a summary judgment. The order of the Regional Commissioner denying the application for adjustment of status under the Refugee Relief Act of 1953 was vacated and the case was remanded for further proceedings.

On February 8, 1957, a further hearing was conducted, at which time additional evidence was presented. The applicant and his attorneys contend that he deserted the Chinese Air Force in this country because of his opposition to the Nationalist Government of Chiang Kai Shek and if he returned to Formosa he would be persecuted because of his political stand. Under date of January 8, 1957 the Chinese Consul General in San Francisco officially advised this Service that his Government had directed him to declare that according to their law this applicant is subject to prosecution for desertion upon his return to Taiwan (Formosa); he will face a trial in an orderly, judicial process, in which

## Exhibit "A"—(Continued)

there will be a formal indictment and the defendant is permitted to be defended by lawyers, including the right to cross-examine witnesses against him. If convicted, he will be subject to punishment according to Article 93 of the Criminal Code governing the personnel of the Army, Navy, and Air Force of the Republic of China, the maximum sentence being imprisonment for not more than 3 years. The allegation that he will be subject to persecution or death sentence is entirely groundless.

It is believed that members of the Armed Forces of China should be placed in the same category as other Government Officials holding official positions in Formosa (Taiwan). As the Chinese Nationalist Government has possession of Formosa and is there indefinitely it is believed that their residence is in Formosa. It is therefore apparent that this applicant can return to Formosa (Taiwan), the place of his last residence, without fear of persecution on account of his political opinion and the application will be denied on that ground.

Recommendation: It is recommended that the alien's application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953 be denied for the reason that the applicant can return to Formosa (Taiwan), the place of his last residence, without fear of persecution on account of his political opinion.

A. J. Borstadt,  
Immigration Officer.

Exhibit "A"—(Continued)

Upon consideration of the entire record, and the exceptions filed, we find that the exceptions are without merit and that the application should be denied.

DAVID H. CARNAHAN,  
Regional Commissioner,  
Southwest Region.

So Ordered April 19, 1957.

[Endorsed]: Filed April 29, 1957.

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[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Good cause appearing upon reading the Petition on file herein, it is

Ordered, that Bruce G. Barber, appear before this Court on the 2nd day of May, 1957, at the hour of 9:30 o'clock of that day to show cause, if any he has, why a Writ of Habeas Corpus should not issue herein as prayed, and that a copy of this Order be served upon him.

It Is Further Ordered that the Petitioner remain in custody within the jurisdiction of this Court until it is further ordered herein.

Dated: April 29, 1957.

/s/ EDWARD P. MURPHY,  
United States District Judge.

[Endorsed]: Filed April 29, 1957.

[Title of District Court and Cause.]

## RETURN TO ORDER TO SHOW CAUSE

Comes Now Bruce G. Barber, District Director of the Immigration and Naturalization Service, San Francisco, California, (hereinafter referred to as "respondent"), by and through his attorneys, Lloyd H. Burke, United States Attorney, and James W. Grant, Special Assistant United States Attorney, for the Northern District of California, Southern Division, and makes the following return to the order to show cause issued by the above Court on April 29, 1957 and to the petition for writ of habeas corpus:

### I.

The allegations of Paragraphs I, II, III, IV, V, VI and IX are true.

### II.

The allegations of Paragraphs X, XI and XIII are denied.

### III.

In Paragraph VII, the allegations are true, except that after the hearing on March 18, 1957, the Immigration Officer recommended that the application of Cheng Fu Sheng be denied, and by order dated April 19, 1957 that recommendation was approved by David H. Carnahan, Regional Commissioner of the Immigration and Naturalization Service; that this order is not inconsistent nor contrary to the respondent's prior pleadings and admissions before this Court.

## IV.

The allegations of Paragraph VIII are denied. The said Cheng Fu Sheng's last place of residence was found to be Formosa (Taiwan) by the Regional Commissioner of the Immigration and Naturalization Service, to which the applicant can return without fear of persecution for political opinions.

## V.

The allegation in Paragraph XII that the respondent intends to deport the said Cheng is admitted, but it is denied that this deportation is unlawful.

## VI.

In accordance with the order of the Honorable Louis E. Goodman, Judge of this Court, of September 28, 1956, this matter was remanded for further proceedings by the Immigration and Naturalization Service, to determine the eligibility of the petitioner under Section 6 of the Refugee Relief Act. The further proceedings of the Immigration and Naturalization Service were in all respects legal and resulted in a recommendation of the Immigration Officer that the petitioner be denied adjustment of his immigration status under the provisions of Section 6 of the Refugee Relief Act for the reason that the petitioner can return to Formosa (Taiwan), the place of his last residence, without fear of persecution on account of his political opinions, and that this recommendation was approved by the Regional Commissioner for the Southwest Region, the lawful delegate of the Attorney General in these matters.

Wherefore, the respondent prays that the petitioner take nothing by his petition herein, that the order to show cause be discharged, that the petition be denied, and the action dismissed.

Dated: May 1, 1957.

LLOYD H. BURKE,  
United States Attorney,  
/s/ By JAMES W. GRANT,  
Special Assistant U. S.  
Attorney.

Notice of Mailing Attached.

[Endorsed]: Filed May 1, 1957.

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In The United States District Court, Northern  
District of California, Southern Division

Nos. 36393 and 36403

CHENG FU SHENG and LIN FU MEI,  
Plaintiffs,  
vs.

BRUCE G. BARBER, as District Director of Immigration and Naturalization Service, San Francisco, and DAVID H. CARNAHAN, as Regional Commissioner of the Immigration and Naturalization Service, Defendants.

#### OPINION

Murphy, District Judge.

Upon the well reasoned authority to be found in

Wei v. Robinson, a case decided by the United States Court of Appeals, Seventh Circuit, June 28, 1957 (246 F. 2d 739) the relief sought by the petitioners, and each of them, is hereby denied.

Let the prevailing party prepare findings of fact and conclusions of law, which because of the nature of the issues involved would seem eminently appropriate in this instance.

Dated: November 12th, 1957.

/s/ EDWARD P. MURPHY,  
United States District Judge.

[Endorsed]: Filed November 12, 1957.

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[Title of District Court and Cause.]

## PROPOSED MODIFICATIONS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Findings of Fact

Omit Finding of Fact XI.

### Conclusions of Law

#### II.

Plaintiff is subject to deportation on the charge set forth in the warrant of arrest.

#### III.

The warrant of deportation issued by the defendant is valid.

### Reasons For Objections

Objection is taken to Finding of Fact XI and

Conclusions of Law II and III. The ground of objection is that the above Finding and Conclusions pertain to plaintiff's eligibility for adjustment of status under Section 6 of the Refugee Relief Act of 1953. Although the issues were presented to the Court, it appears that no determination was made by this Court's opinion filed November 12, 1957.

Relief was denied to plaintiff upon the authority of Wei vs. Robinson, 246 F 2d 739. That case reviewed a declaratory judgment of the trial court which had held an order of deportation to be invalid. The only issue presented and determined by the Court in Wei v. Robinson was whether an alien who is admitted prior to the effective date of the Immigration and Nationality Act of 1952 as a government official and subsequently fails to maintain that status is subject to deportation under the provisions of Section 241 (a) (9) of the Immigration and Nationality Act of 1952. That Court did not consider nor decide whether or not Wei was eligible for change in status under the provisions of the Refugee Relief Act of 1953. As a factual matter, deportability in instant case was at all times conceded. To deny adjustment of status on that ground is contrary to the expressed language of the statute. In addition, the Government has over a long period of time granted permanent residence to thousands of aliens whose deportability was not contested. The Government's action was subsequently approved by Congress both under the prior Displaced Persons Act, as well as under the present

Refugee Relief Act. This Court's opinion then, based upon the decision in Wei v. Robinson, provides no basis for Finding of Fact or Conclusions of Law to be made concerning any other issue than that of deportability.

Dated: December 3, 1957.

Respectfully submitted,

FALLON & HARGREAVES,  
/s/ By ARLIN W. HARGREAVES,  
Attorneys for Appellant.

[Endorsed]: Filed December 3, 1957.

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[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW**

The above action having come before the Court upon a Petition for Habeas Corpus, before the Honorable Edward P. Murphy, Judge of the above-entitled Court, and having been submitted by counsel on May 10, 1957, petitioner appearing by his attorneys, Fallon and Hargreaves, and defendants appearing by Lloyd H. Burke, United States Attorney, and James W. Grant, Special Assistant United States Attorney, and the Court being fully advised of the premises, makes the following findings of fact and conclusions of law.

**Findings of Fact**

**I.**

The petitioner last entered the United States

from Taiwan (Formosa) at the Port of Honolulu, Territory of Hawaii, on June 9, 1952. He was admitted as an official of the Chinese Nationalist Government in the status of a bona fide non-immigrant under the provisions of Section 3(1) of the Immigration Act of 1924, as amended (43 Stat. 153; 8 USC 203, repealed by incorporation of the provisions into 8 USC 403(a)(23) with savings clause 8 USC 405).

## II.

The petitioner at the time of entry was a Captain in the Chinese Nationalist Air Force who had come to the United States under the Mutual Defense Assistance Program for advanced pilot training at Tyndall Air Force Base, Florida.

## III.

On October 18, 1952, the petitioner, having completed said advanced pilot training, arrived at Fort Mason, San Francisco, California, for departure with his unit for return to Taiwan (Formosa). On October 21, 1952, the petitioner deserted his military unit in San Francisco and remained in the United States, taking civilian employment.

## IV.

On December 23, 1952, the petitioner was arrested by authority of a warrant issued by the Immigration and Naturalization Service on the grounds "he has remained in the United States after failing to maintain the exempt status under which he was admitted, of an accredited official of a foreign gov-

ernment recognized by the government of the United States."

#### V.

A hearing was held on deportation proceedings on March 13, 1953, and on December 2, 1953, the petitioner was granted voluntary departure with an alternate order requiring deportation in the event he did not depart voluntarily.

#### VI.

On May 28, 1954, petitioner filed his application under Section 6 of the Refugee Relief Act of 1953, and on January 13, 1956, after appropriate hearings, the application was denied by the Regional Commissioner.

#### VII.

On January 17, 1956, petitioner having been found to be an alien illegally in the United States in that he had failed to maintain the status under which he was admitted, a warrant of deportation was issued.

#### VIII.

The petitioner then filed for a stay of deportation under Section 243(h) of the Immigration and Nationality Act of 1952, and on July 6, 1956, after appropriate hearings, the application was denied by the Regional Commissioner.

#### IX.

In an action for declaratory judgment filed July 12, 1956, this Court on September 28, 1956, vacated the order of the Regional Commissioner denying the application for adjustment of status and re-

manded the case to respondent for further proceedings to determine whether the petitioner was eligible for relief under Section 6 of the Refugee Relief Act.

## X.

On April 19, 1957, after further hearings, the Regional Commissioner denied the plaintiff's application under Section 6 of the Refugee Relief Act on the grounds that the petitioner did not come within the provisions thereof since he is not unable to return to Taiwan (Formosa), the place of his last residence, because of persecution or fear of persecution on account of race, religion or political opinion.

## XI.

The petitioner's place of last residence is Taiwan (Formosa) and the petitioner is able to return to Taiwan (Formosa) without persecution or fear of persecution on account of his race, religion or political opinion.

### Conclusions of Law

#### I.

The petitioner's status as a non-immigrant entitled to remain in the United States terminated when he deserted his Air Force group and took work other than specified in the terms of his admission.

#### II.

Upon the termination of his status as a bona fide non-immigrant within the meaning of Section 6 of the Refugee Relief Act, petitioner became ineligible for the benefits of that Act.

III.

The petitioner is not eligible for consideration under Section 6 of the Refugee Relief Act since he can return to his place of last residence, Taiwan (Formosa) without persecution or fear of persecution on account of race, religion or political opinion.

IV.

Petitioner has at all times been afforded due process and a fair hearing, and there has been no abuse of administrative discretion.

V.

The petitioner is not entitled to the writ of habeas corpus which he seeks by this action.

Let Judgment be entered accordingly.

Dated: January 16, 1958.

/s/ EDWARD P. MURPHY,  
United States District Judge.

Notice of Mailing Attached.

[Endorsed]: Filed January 16, 1958.

In the United States District Court, Northern  
District of California, Southern Division

Civil No. 36393

In the Matter of the Application of CHENG FU  
SHENG, For a Writ of Habeas Corpus.

**JUDGMENT**

This matter having been submitted and the Court after reviewing the administrative record, having found the petitioner has been accorded due process of law with a fair and impartial hearing and that there is no evidence of any arbitrary or capricious decision and that the detention of the petitioner is legal; and having heretofore on November 12, 1957 made and entered its order denying the relief sought by the petitioner;

It Is Hereby Ordered, Adjudged and Decreed that the writ of habeas corpus as prayed for be and the same is hereby denied and that the petition and action of the plaintiff is hereby dismissed.

Dated: January 16th, 1958.

/s/ EDWARD P. MURPHY,  
United States District Judge.

Entered in Civil Docket Jan. 16, 1958.

[Endorsed]: Filed January 16, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the above entitled Court, to Bruce G. Barber, District Director of Immigration and Naturalization Service, San Francisco, and to Lloyd H. Burke, Esq., United States Attorney, his attorney:

You and each of you will please take notice that Cheng Fu Sheng, the petitioner in the above entitled matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment made and entered herein on January 16, 1958, denying the petition for a writ of habeas corpus filed herein.

Dated: February 12, 1958.

FALLON AND HARGREAVES,  
/s/ By ARLIN W. HARGREAVES,  
Attorneys for Petitioner.

[Endorsed]: Filed February 12, 1958.

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[Title of District Court and Cause.]

### CASH DEPOSIT IN LIEU OF BOND FOR COSTS ON APPEAL

The undersigned acknowledges that he and his personal representatives are bound to pay to respondent, the sum of Two Hundred Fifty (\$250.00) Dollars, and he hereby deposits in cash the sum of Two Hundred Fifty (\$250.00) Dollars into the reg-

istry of this Court in lieu of a bond for costs on appeal.

The condition upon which said deposit is made is that, whereas the Petitioner has appealed to the Court of Appeals for the Ninth Circuit by Notice of Appeal filed February 12, 1958, from the Judgment of this Court entered January 16, 1958, if the Petitioner shall pay all costs adjudged against him if the appeal is dismissed or the Judgment affirmed, or such costs as the Appellate Court may award if the Judgment is modified, then said deposit shall be returned to the undersigned, but if the Petitioner fails to perform this condition, delivery of said deposit to the respondent shall be made forthwith.

/s/ CHENG FU-SHENG,  
Petitioner.

Signed and acknowledged before me this 12th day of February, 1958.

[Seal] /s/ JOSEPH P. FALLON, JR.,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Acknowledgment of Service Attached.

[Endorsed]: Filed February 12, 1958.

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[Title of District Court and Cause.]

#### STATEMENT OF POINTS

The points upon which Appellant will rely on appeal are:

1. The Court erred in finding that the Petitioner-

Appellant's place of last residence is Taiwan (Formosa).

2. The Court erred in finding that the Petitioner-Appellant is able to return to Taiwan (Formosa) without persecution or fear of persecution on account of his race, religion or political opinion.

3. The Court erred in concluding that the Petitioner-Appellant became ineligible for the benefits of Section 6 of the Refugee Relief Act upon termination of his status as a bona fide non-immigrant in the United States.

Dated: March 3, 1958.

FALLON AND HARGREAVES,  
/s/ By ROBERT S. BIXBY,  
Attorneys for Petitioner-  
Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 4, 1958.

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF  
RECORD ON APPEAL

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the petitioner-appellant hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed February 12, 1958, the following portions of the record, proceedings and evidence in this action:

1. Petition for Writ of Habeas Corpus with attachments.
2. Order to Show Cause.
3. Return to Order to Show Cause.
4. Certified copy of the record of the Immigration and Naturalization Service.
5. Opinion dated November 12, 1957.
6. Proposed Modifications of Findings of Fact and Conclusions of Law.
7. Reporter's transcript of hearing on Modifications of Findings.
8. Findings of Fact and Conclusions of law dated January 16, 1958.
9. Judgment dated January 16, 1958.
10. Notice of Appeal.
11. Statement of Points on Appeal.
12. This designation.
13. Docket Entries.

Dated: March 3, 1958.

FALLON AND HARGREAVES,  
/s/ By ROBERT S. BIXBY,  
Attorneys for Petitioner-  
Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 4, 1958.

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries.

Petition for Writ of Habeas Corpus.

Order to Show Cause.

Return to Order to Show Cause.

Opinion of Court.

Proposed Modifications of Findings of Fact and Conclusions of Law, submitted by Plaintiff.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Appeal Bond.

Statement of Points Upon Which Appellant Intends to Rely.

Appellant's Designation of Record on Appeal.

Defendant's Exhibit 1. (Certified copy of record of Immigration and Naturalization Service.)

Reporter's Transcript of proceedings, Jan. 16, 1958.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 24th day of March, 1958.

[Seal]

C. W. CALBREATH,  
Clerk,

/s/ By MARGARET P. BLAIR,  
Deputy Clerk.

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[Endorsed]: No. 15959. United States Court of Appeals for the Ninth Circuit. Cheng Fu Sheng, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: March 24, 1958.

Docketed: April 2, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

No. 15959

CHENG FU SHENG, Petitioner-Appellant,  
vs.

BRUCE G. BARBER, as District Director of  
Immigration and Naturalization Service, San  
Francisco, Respondent-Appellee.

No. 15960

LIN FU MEI, Appellant,  
vs.

BRUCE G. BARBER, as District Director of  
Immigration and Naturalization Service, San  
Francisco, and

DAVID H. CARNAHAN, as Regional Commis-  
sioner of the Immigration and Naturalization  
Service, Appellees.

**ORDER**

Considering the Motion of Appellants for an  
order to consolidate the above entitled and num-  
bered cases for the purpose of briefing, argument  
and submission it is this 22nd day of April, 1958,

Ordered that the above entitled cases be consoli-  
dated for the purpose of briefing, argument and  
submission.

/s/ ALBERT LEE STEPHENS,  
Chief United States Circuit  
Judge.

[Endorsed]: Filed April 22, 1958. Paul P.  
O'Brien, Clerk.

